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8 SUPERIOR COURT OF THE STATE OF CALIFORNIA  
9 COUNTY OF SAN DIEGO  
10

11 MAUREEN PARKER,

12 Plaintiff,

13 v.

14 DYNO LLC d/b/a DYNO MERCHANDISE

15 Defendant.  
16  
17

Case No. xxxxxxxxxxxx

**CONSENT JUDGMENT [PROPOSED]**

18 **1. INTRODUCTION**

19 1.1 On September xx, 2011, Plaintiff Maureen Parker ("Parker") filed a complaint  
20 ("Complaint") in San Diego County Superior Court, entitled *Maureen Parker v. DYNO LLC*, in  
21 San Diego County Superior Court Case Number \_\_\_\_\_, for civil penalties and  
22 injunctive relief pursuant to the provisions of California Health & Safety Code §25249.5 *et seq.*  
23 ("Proposition 65").

24 1.2 The parties to this Consent Judgment ("Parties") are Parker and Defendant DYNO  
25 LLC, d/b/a Dyno Merchandise ("DYNO"), a company that employs 10 or more persons.

26 1.3 On or about July 11, 2011, Parker served DYNO and the appropriate public  
27 enforcement agencies with a pre-suit notice ("60 Day Notice") pursuant to Health and Safety  
28

1 Code Section 25249.7(d), alleging that DYNO was in violation of Proposition 65. Parker's 60  
2 Day Notice and the Complaint in this Action allege that DYNO has exposed persons to lead from  
3 safety pins without first providing clear and reasonable warnings. Lead is listed pursuant to  
4 Proposition 65 as a chemical known to the State of California to cause cancer, birth defects and  
5 other reproductive harm. The 60 Day Notice and Complaint allege that DYNO's conduct violates  
6 Health & Safety Code §25249.6, the warning provision of Proposition 65.

7 1.4 For purposes of this Consent Judgment only, the Parties stipulate that this Court  
8 has jurisdiction over the subject matter of the violations alleged in the Complaint and personal  
9 jurisdiction over DYNO as to the acts alleged in the Complaint, that venue is proper in the  
10 County of San Diego, and that this Court has jurisdiction to enter this Consent Judgment as a full  
11 and final resolution of all claims which were or could have been raised in the Complaint based on  
12 the facts alleged therein.

13 1.5 DYNO denies the material factual and legal allegations contained in Parker's  
14 notice and in the Complaint. This Consent Judgment resolves claims that are denied and disputed  
15 by DYNO. The Parties enter into this Consent Judgment pursuant to a full and final settlement  
16 and resolution of any and all claims between the Parties for the purpose of avoiding prolonged  
17 litigation. By executing this Consent Judgment, the Parties do not admit any facts or conclusions  
18 of law. It is the Parties' intent that nothing in this Consent Judgment shall be construed as an  
19 admission by the Parties of any fact, conclusion of law, issue of law or violation of law, nor shall  
20 compliance with the Consent Judgment constitute or be construed as an admission by the Parties  
21 of any fact, conclusion of law, issue of law, or violation of law. Nothing in this Consent  
22 Judgment shall prejudice, waive or impair any right, remedy, argument or defense the Parties may  
23 have in this or any other or future legal proceedings.

## 24 2. DEFINITIONS

25 2.1 The term "Covered Products" means Singer Safety Pins, including but not limited  
26 to UPC #s075691002213 and 075691002053, as well as 075691002060, 075691002244,  
27 075691002251, 075691002268, 075691002947, 075691002961, 075691003029, 075691003043,  
28 075691070717, 075691070748, 075691074609, 075691074708, 075691074807 07569003050,

1 07569003081, 075691032036, 075691001629, and 075691001636, which DYN0 distributes for  
2 sale within the State of California.

3 2.2 The term "Effective Date" means the date on which this [Proposed] Consent  
4 Judgment is entered by the Court.

5 **3. INJUNCTIVE RELIEF**

6 3.1 A Covered Product shall either be a) reformulated pursuant to Section 3.2 or b)  
7 labeled with a warning as provided in Section 3.3. In addition, Covered Products that are  
8 reformulated pursuant to Section 3.2 and manufactured subsequent to 90 days after the Effective  
9 Date shall include on or in their packaging the date on which that product line was initially tested  
10 for compliance with the reformulation standards set forth in Section 3.2.

11 3.2 **Reformulation.** A Covered Product shall be deemed to comply with Proposition  
12 65 with regard to lead and be exempt from any Proposition 65 warning requirements for lead if  
13 the Covered Product does not exceed (a) 300 ppm lead by weight for Covered Products  
14 manufactured subsequent to 90 days after the Effective Date but before January 1, 2013; and (b)  
15 100 ppm lead by weight for Covered Products manufactured on or subsequent to January 1, 2013.

16 3.3 **Warning Alternative.** A Covered Product manufactured subsequent to 90 days  
17 after the Effective Date that does not meet the applicable reformulation level of Section 3.2 shall  
18 contain a warning affixed to or printed on the Covered Product's packaging or labeling. The  
19 warning shall be displayed with such conspicuousness, as compared with other words, statements,  
20 designs, or devices on the Covered Product, or its packaging or labeling, as to render it likely to  
21 be read and understood by an ordinary individual under customary conditions of purchase or use.  
22 The warning requirement shall not apply to any Covered Products that are already in the stream  
23 of commerce prior to or as of 90 days after the Effective Date. A warning provided under this  
24 Section shall state:

25 "WARNING: This product contains chemicals known to the State of California to  
26 cause birth defects or other reproductive harm."  
27  
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1     **4. SETTLEMENT PAYMENTS**

2             4.1     In settlement and final resolution of all the claims referred to in this Consent  
3 Judgment, DYNO shall pay a settlement amount of \$25,000.00 to Parker, to be allocated by  
4 Parker as follows:

5                     4.1.1     **Civil Penalty:** \$2,500.00 as a civil penalty pursuant to Health and Safety  
6 Code Section 25249.7(b). Pursuant to Health and Safety Code Section 25192.DYNO  
7 shall issue two separate checks for the payment: (1) one check made payable to [*The Law*  
8 *Offices of Stephen Ure, PC, in Trust for OEHHA*] in the amount of \$1,875.00  
9 representing 75% of the civil penalty, and (2) one check made payable to [*The Law*  
10 *Offices of Stephen Ure, PC, in Trust for Maureen Parker*] in the amount of \$625.00  
11 representing 25% of the civil penalty. Two separate 1099s shall be issued for the above  
12 payments: (a) OEHHA, P.O. Box 4010, Sacramento, CA 95814, (EIN: 68-0284486); and  
13 (b) Maureen Parker, whose information shall be provided five calendar days before the  
14 payment is due.

15                     4.1.2     **Attorneys' Fees and Costs:** The parties reached an accord on the  
16 compensation due to Parker and her counsel under the private attorney general doctrine.  
17 Under these legal principles, DYNO shall reimburse Parker's counsel \$22,500.00 for their  
18 investigation fees and costs, attorneys' fees, and any other costs incurred as a result of  
19 investigating, bringing this matter to DYNO's attention, litigating and negotiating a  
20 settlement in the public interest, pursuant to Code of Civil Procedure Section 1021.5. This  
21 payment shall be issued in a third and separate check made payable to "Law Offices of  
22 Stephen Ure, PC" to be held in a client trust account until entry of this Consent Judgment  
23 by the court.

24             4.2     **Timing of payments.** DYNO shall deliver the payments required under this  
25 section to the address set forth in Section 13 within ten days after the execution of this Consent  
26 Judgment by both parties, to be held in a client trust account. All amounts, penalties and  
27 attorneys fees and costs, shall remain in the trust account until this Consent Judgment has been  
28 entered by the court. Upon entry of this Consent Judgment, The Law Offices of Stephen Ure,

1 P.C. shall disburse the funds in the trust account to OEHHA, plaintiff, and plaintiff's counsel in  
2 accordance with Sections 4.1.1 and 4.1.2 as specified above.

3 **5. RELEASE OF ALL CLAIMS**

4 **5.1 Release of DYN0 and Downstream Customers.** This Consent Judgment is a  
5 full, final and binding resolution between Parker on behalf of herself and the public interest and  
6 DYN0, and its parents, shareholders, divisions, subdivisions, subsidiaries, partners, sister  
7 companies, and affiliates, and their successors and assigns, and each of their officers, directors,  
8 attorneys, representatives, shareholders, agents and employees ("Defendant Releasees"), all  
9 entities to whom they directly or indirectly distribute or sell Covered Products, including but not  
10 limited to distributors, wholesalers, customers, retailers (including but not limited to Sears, K-  
11 Mart, CVS, and Rite-Aid), franchisees, cooperative members, auctioneers, dealers, owners,  
12 purchasers, users, and Defendant Releasee's licensors and licensees ("Downstream Defendant  
13 Releasees"), of any alleged violation of Proposition 65 that was or could have been asserted in the  
14 Complaint against DYN0, Defendant Releasees, and Downstream Defendant Releasees, based on  
15 failure to warn about alleged exposure to lead contained in any Covered Products manufactured  
16 prior to 90 days after the Effective Date.

17 **5.2** In further consideration of the promises and agreements herein contained, the  
18 injunctive relief commitments set forth in Section 3, and for the payments to be made pursuant to  
19 Section 4, Parker, on behalf of herself, her past and current agents, representatives, attorneys,  
20 successors, and/or assignees, and in the interest of the general public, hereby waives all rights to  
21 institute or participate in, directly or indirectly, any form of legal action and releases all claims,  
22 including, without limitation, all actions, and causes of action, in law or in equity, suits, liabilities,  
23 demands, obligations, damages, costs, fines, penalties, losses, or expenses (including, but not  
24 limited to, investigation fees, expert fees, and attorneys' fees) of any nature whatsoever, whether  
25 known or unknown, fixed, or contingent (collectively "claims"), against the Defendant Releasees  
26 and the Downstream Defendant Releasees. This release applies to any claims that arise under  
27 Proposition 65 with respect to any chemicals listed under Proposition 65 in any products  
28 manufactured, distributed, or sold by DYN0 as such claims relate to the alleged failure to warn

1 under Health & Safety Code Section 25249.6. Notwithstanding any other provision in this  
2 Consent Judgment, the release of claims by the general public is limited to those claims made in  
3 the 60 Day Notice. In furtherance of the foregoing, Parker, acting on behalf of herself and the  
4 general public, hereby waives any and all rights and benefits which it now has, or in the future  
5 may have, conferred upon it with respect to the Covered Products by virtue of the provisions of  
6 Section 1542 of the California Civil Code, which provides as follows:

7  
8 "A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS WHICH  
9 THE CREDITOR DOES NOT KNOW OR SUSPECT TO EXIST IN HIS  
10 FAVOR AT THE TIME OF EXECUTING THE RELEASE, WHICH IF  
KNOWN BY HIM MUST HAVE MATERIALLY AFFECTED HIS  
SETTLEMENT WITH THE DEBTOR."

11 Parker understands and acknowledges that the significance and consequence of this  
12 waiver of California Civil Code Section 1542 is that even if Parker or any member of the  
13 general public suffers future damages arising out of or resulting from, or related directly  
14 or indirectly to, in whole or in part, the Covered Products, it will not be able to make any  
15 claim for those damages against Defendant Releasees or Downstream Defendant  
16 Releasees or any other person in the course of business involving the Covered Products  
17 and the successors and assigns of any of them, who may manufacture, use, maintain,  
18 distribute or sell the Covered Products. Furthermore, Parker acknowledges that she  
19 intends these consequences for any such claims which may exist as of the date of this  
20 release but which Parker does not know exist, and which, if known, would materially  
affect her decision to enter into this Consent Judgment, regardless of whether her lack of  
21 knowledge is the result of ignorance, oversight, error, negligence, or any other cause.

22 5.3 On behalf of itself and Defendant Releasees, DYN0 waives all rights to institute  
23 any form of action against Parker, her attorneys, consultants, and representatives for all actions  
24 taken or statements made in the course of this Action prior to the date of the execution of this  
Consent Judgment.

25 5.4 Compliance with the terms of this Consent Judgment by DYN0 shall constitute  
26 compliance with Proposition 65 with respect to lead in any Covered Products that are  
27 manufactured, shipped, or sold by DYN0 subsequent to 90 days after the Effective Date.  
28

1       **6. COURT APPROVAL**

2           6.1     This Consent Judgment is not effective until it is approved and entered by the  
3 Court and shall be null and void if, for any reason, it is not approved and entered by the Court  
4 within one year after it has been fully executed by all Parties.

5           6.2     If the Court does not approve the Consent Judgment, the Parties shall meet and  
6 confer as to whether to modify the terms of this Consent Judgment or appeal the ruling. If the  
7 Parties do not jointly agree on a course of action to take, the case shall proceed on its normal  
8 course on the trial court's calendar.

9           6.3     If the Court approves this Consent Judgment and is reversed or vacated by an  
10 appellate court, the Parties shall meet and confer as to whether to modify the terms of this  
11 Consent Judgment. If the Parties do not jointly agree on a course of action to take, any monies  
12 that have been paid to Plaintiff and/or Plaintiff's counsel pursuant to Section 4 shall be refunded  
13 within 15 days after remittitur to the trial court, and the case shall proceed on its normal course on  
14 the trial court's calendar.

15       **7. ENFORCEMENT**

16           7.1     Any Party may, by motion or application for an order to show cause before this  
17 Court, enforce the terms and conditions contained in this Consent Judgment. A Party may  
18 enforce any of the terms and conditions of this Consent Judgment only after that Party first  
19 provides 30 days notice to the Party allegedly failing to comply with the terms and conditions of  
20 this Consent Judgment and attempts to resolve such Party's failure to comply in an open and good  
21 faith manner.

22       **8. MODIFICATION**

23           8.1     This Consent Judgment may be modified from time to time by express written  
24 agreement of the Parties, with the approval of the Court, or by an order of this Court upon motion  
25 and in accordance with law. A Party seeking to modify this Consent Judgment shall attempt in  
26 good faith to meet and confer with all affected Parties prior to filing a motion to modify the  
27 Consent Judgment.

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1       **9.     ACCURACY OF SALES DATA**

2             DYN0 understands that the sales data provided to counsel for Parker by DYN0 was a  
3 material factor upon which Parker has relied to determine the amount of payments made pursuant  
4 to Health and Safety Code §25249.7(b) under this Agreement. DYN0 represents that the sales  
5 data provided to plaintiff is true and accurate.

6       **10.    ENTIRE AGREEMENT**

7             10.1    This Consent Judgment contains the sole and entire agreement and understanding  
8 of the Parties with respect to the entire subject matter hereof, and any and all prior discussions,  
9 negotiations, commitments, or understandings related thereto, if any, are hereby merged herein  
10 and therein. No representations, oral or otherwise, express or implied, other than those  
11 specifically referred to in this Consent Judgment have been made by any Party hereto. No  
12 supplementation, modification, waiver, or termination of this Consent Judgment shall be binding  
13 unless executed in writing by the Party to be bound thereby. No waiver of any of the provisions  
14 of this Consent Judgment shall be deemed or shall constitute a waiver of any of the other  
15 provisions hereof whether or not similar, nor shall such waiver constitute a continuing waiver.

16       **11.    GOVERNING LAW AND APPLICATION**

17             11.1    The terms of this Consent Judgment shall be governed by the laws of the State of  
18 California and shall apply within the State of California. In the event that Proposition 65 is  
19 repealed or otherwise rendered inapplicable by reason of law generally, or as to the Covered  
20 Products, then DYN0 shall provide written notice to Parker of any asserted change in the law,  
21 and shall have no further obligations pursuant to this Settlement Agreement with respect to, and  
22 to the extent that, the Covered Products are so affected.

23             11.2    This Consent Judgment shall apply to and be binding upon Parker and DYN0 and  
24 its divisions, subdivisions, and subsidiaries, and the Parties' successors and assigns.

25             11.3    The Parties, including their counsel, have participated in the preparation of this  
26 Consent Judgment and this Consent Judgment is the result of the joint efforts of the Parties. This  
27 Consent Judgment was subject to revision and modification by the Parties and has been accepted  
28 and approved as to its final form by all Parties and their counsel. Accordingly, any uncertainty or

1 ambiguity existing in this Consent Judgment shall not be interpreted against any Party as a result  
2 of the manner of the preparation of this Consent Judgment.

3 **12. RETENTION OF JURISDICTION**

4 12.1 This Court shall retain jurisdiction of this matter to implement, modify, and  
5 enforce the terms this Consent Judgment.

6 **13. PROVISION OF NOTICE**

7 13.1 All notices required pursuant to this Consent Judgment and correspondence shall  
8 be sent to the following:

9

10 For Parker:

11 Law Offices of Stephen Ure, PC  
12 1518 Sixth Avenue  
13 San Diego, CA 92101

14 For DYNO:

15 Jim Moynihan  
16 DYNO Merchandise  
17 1571 W. Copans Rd., Suite 105, Pompano Beach, FL 33064-1513

18 With a copy to:

19 Andrea Sumits  
20 Holland & Knight LLP  
21 50 California Street, Suite 2800  
22 San Francisco, CA 94111

23 **14. COURT APPROVAL**

24 14.1 This Consent Judgment shall become effective upon entry by the Court. Parker  
25 shall prepare and file a Motion for Approval of this Consent Judgment pursuant to Health and  
26 Safety Code Section 25249.7(f).

27 14.2 If this Consent Judgment is not approved by the Court, it shall be of no further  
28 force or effect, and shall not be introduced into evidence or otherwise used in any proceeding for  
any purpose.

1 **15. ATTORNEY'S FEES**

2 15.1 A party who unsuccessfully brings or contests an action arising out of this Consent  
3 Judgment shall be required to pay the prevailing party's reasonable attorney's fees and costs  
4 unless the unsuccessful party has acted with substantial justification. For purposes of this  
5 Consent Judgment, the term substantial justification shall carry the same meaning as used in the  
6 Civil Discovery Act of 1986, Code of Civil Procedure Section 2016, et seq.

7 15.2 Nothing in this Section 15 shall preclude a Party from seeking an award of  
8 sanctions pursuant to law.

9 **16. EXECUTION AND COUNTERPARTS**

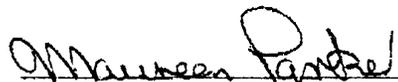
10 16.1 The stipulations to this Consent Judgment may be executed in counterparts and by  
11 means of facsimile and/or portable document format (pdf), which taken together shall be deemed  
12 to constitute one document.

13 **17. AUTHORIZATION**

14 17.1 Each signatory to this Consent Judgment certifies that he or she is fully authorized  
15 by the party he or she represents to stipulate to this Consent Judgment and to enter into and  
16 execute the Consent Judgment on behalf of the party represented and legally bind that party. The  
17 undersigned have read, understand and agree to all of the terms and conditions of this Consent  
18 Judgment. Except as explicitly provided herein, each party is to bear its own fees and costs.

19 AGREED TO:

20  
21 Dated: 10/24/11

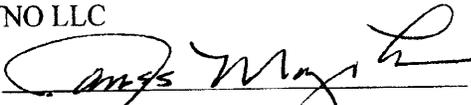
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24 Maureen Parker  
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Dated: 10-21-11

DYNO LLC

By 

Name: JAMES MOYNIHAN

Title: PRESIDENT & CEO